

The European Public Prosecutor's Office as a New Form of Institutional Judicial Cooperation Among EU Member States

Jiří Jelínek

This article will discuss Council Regulation (EU) 2017/1939 of 12 October 2017 on the establishment of the European Public Prosecutor's Office. This project is a significant demonstration of the unification of European criminal law and the redirection from the traditional judicial cooperation among individual EU member states on the path toward a unified and controlled investigation of criminal offences against the financial interests of the EU throughout the whole European Union. Initially, the scope of authority of the new office will include only 20 EU member states within the framework of the so-called enhanced cooperation. This article will characterize the reasons for the implementation of this office, the reasons against its establishment, and possible issues that may arise during its establishment and throughout the course of its activities.

Keywords: EU criminal law, European Public Prosecutor's Office, cooperation among EU member states in criminal matters, crimes against the financial interests of the European Union



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Brief description of institutional sphere

Not long ago, criminal law was considered one of the attributes and demonstrations of national sovereignty of EU member states and any interference in their national sovereignty was considered unacceptable.

The European Union is a relatively new institution that has undergone numerous significant changes, including changes in the area of criminal law, in the past two decades. Especially since the Czech Republic joined the European Union¹, criminal law in the Czech Republic as well as in other EU member states has been increasingly influenced by the criminal law of the European Union². This applies both to substantive criminal law and procedural criminal law. Within the scope of substantive criminal law, the influence is manifested particularly by the harmonisation of legal terms, institutes, constitutive elements of criminal offences or, as the case may be, the efforts to harmonise sanctions.³ Within the scope of process criminal law, the influence of the criminal law of the European Union is manifested particularly by mutual police and judicial cooperation, exchange of information, mutual recognition of procedural decisions, replacement of formal extradition proceedings by a simplified surrender of persons between EU member states, harmonization of procedural rights of individuals (defendants and aggrieved persons or, as the case may be, victims of criminal offences), mutual admissibility of evidence between EU member states, and other procedures.

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The objective of this article is to address the new project of the European Public Prosecutor or the European Public Prosecutor's Office (EPPO) – I shall use these terms as synonyms – and the issues associated with its operation in one of the EU member states, the Czech Republic. Czech procedural criminal law is a type of the continental model of European law that is sometimes referred to as Romano-German law. In essence, the statements made regarding Czech criminal proceedings may be applied to other criminal proceedings in countries that belong to the same type (e.g. Germany, Austria, Switzerland, Slovakia, Italy, etc.).

The reason why I am addressing this topic is the fact that I consider the project of the European Public Prosecutor along with its intended scope as key and ground-breaking in criminal law of the European Union.

In a certain sense, the establishment of the European Public Prosecutor's Office crowns the efforts to create a unified legal framework of

penalties for international economic crime - efforts to achieve a unified or coordinated procedure when investigating criminal offences as well as during the subsequent criminal proceedings and enforcement of the decision.

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The existing forms of cooperation among EU Member states in the area of process criminal law, e.g. The European Union Agency for Law Enforcement Cooperation (Europol⁴), The European Union`s Judicial Cooperation Unit (Eurojust⁵), The European Anti-Fraud Office (OLAF⁶), the European Judicial Network⁷, and other processes are to be complemented by a qualitatively higher form of cooperation, the ground-breaking institute in European criminal law. It is a manifestation of the tendency to depart from the traditional judicial cooperation among EU member states toward a unified and centrally controlled investigation, in the future hopefully throughout the whole EU territory, and currently throughout the territory of 20 cooperating states.

As mentioned above, the scope of authority of the EPPO shall not apply to all EU member states in a blanket manner; in fact, it shall be binding in its entirety and directly applicable only to the 20 EU Member states that voluntarily decided to coordinate their criminal justice with the EPPO⁸. Out of the four countries bordering the Czech Republic, Germany, Austria, and Slovakia have joined the project, while Poland (and other EU member states) have not made the commitment to cooperate mainly due to their fears of the extended powers of the EPPO that could collide with the interests of the individual national states in the area of criminal justice.

The Regulation proposal to establish a joint European prosecutor was adopted on 5 October 2017.⁹ The European Parliament has 751 MEPs; the Czech Republic is represented by 21 MEPs. From the present MEPs, a total of 456 MEPs voted in favour of the proposal, 115 were against the proposal, and 60 MEPs abstained on the vote.¹⁰

Nevertheless, as of right now the actual shape of the EPPO has not been finalized because shortly after the adoption of the Regulation in question, the Ministers of Justice of the involved countries agreed on a future extension of the powers of the European Public Prosecutor's Office in accordance with the intention of the European Commission that is expected to submit a new proposal in September 2018; by then, it is expected that a direct relation between participation in the project of the European Public Prosecutor's Office and the distribution of EU financial resources will have been created.¹¹

As much as the three-year time limit for the launch of the European Public Prosecutor's Office may seem sufficiently long for the preparation of a national legal order (i.e. for the adoption of national legal rules and regulations necessary for the application of said Regulation), it is in fact too short. The introduction of the EPPO into life will require the harmonization of substantive provisions as well as procedural provisions of the Czech Criminal law with European legislation or with the legislation of other countries that had joined the EPPO project.

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Essence, purpose, and basic principles of the functioning of the EPPO

The essence and purpose of the activities of the European Public Prosecutor's Office is captured in the fourth article of said Regulation on the establishment of the EPPO:

The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union, which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the EU Member states, until the case has been finally disposed of.

The main reason for the establishment of the European Public Prosecutor's Office is predominantly to overcome the current unsatisfactory state in the area of finance crime in the EU; according to the data from the European Commission, the EU loses more than 500 million Euro annually based on the official numbers, which means that the actual loss of EU financial resources (i.e. taxpayer money) can be much higher. Therefore, there will be a single main objective of the European Public Prosecutor on the general level – to prosecute crimes that damage the financial interests of the EU. Protection and enforcement of rights in the fight against financial fraud that damages the financial interests of the EU differ greatly in individual EU Member states; such differences should be eliminated by the establishment of the EPPO. Priority shall be given to the protection of the EU budget; the establishment of the EPPO shall bridge the gap between criminal law systems of EU member states, the power of which ends at the border of the individual states not allowing EU subjects to investigate criminal

activities. The European Public Prosecutor's Office should also provide EU member states with a more effective protection of EU financial interests, i.e. a protection of funds that are provided to the EU budget by tax payers.¹²

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2/2018 Council Regulation (EU) 2017/1939 on the establishment of the European Public Prosecutor's Office includes the outline of the structure and operation of the EPPO. Nevertheless, there is a series of specific issues relating to the activities of the EPPO that remain unclear and will need to be clarified step by step before the project becomes active.

The newly established EPPO should operate as an independent EU institution at the central level including the Office of the European Chief Prosecutor who will be in charge of the whole EPPO as well as the College of European Prosecutors, a Permanent Chambers, and European prosecutors. The decentralized level will be represented by the Delegated Prosecutors from EU Member states. The EPPO will operate in parallel with national prosecuting authorities (public prosecutor's offices) in individual countries and it should perform its scope of authority, i.e. particularly investigate criminal offences and prosecute them in national courts pursuant to applicable national law. Nevertheless, there is no establishment of a common European procedural law or common European Criminal Court currently being carried out.

In other words, the European Delegated Prosecutors shall remain as a part of the judicial system in the appropriate EU member state while working for the EPPO headquarters on cases relating to financial interests of the EU under the control and supervision of the European Public Prosecutor (therefore, they shall perform two functions concurrently).

This manner of operation shall ensure that the pre-trial phase is led by a person who has a good understanding of the judicial situation in the appropriate state and does not represent a foreign element; on the other hand, this position may bring along conflicts arising as a result of the performance of two functions, for instance in mixed cases related to both damaging the financial interests of the EU and the interests protected only by the EU member state, in which case the Delegated Prosecutor or the Public Prosecutor would be simultaneously subject to dual control or supervision.

Pursuant to Article 86, item two of the Treaty on the Functioning of the European Union, the European Public Prosecutor's Office shall perform the function of the Public Prosecutor in the relevant Courts

of EU member states. Acts performed by the EPPO during the investigation shall be closely related to criminal prosecution that may arise from them; therefore, they shall be reflected in the legal order of EU member states. In many cases, such acts shall be performed by national law enforcement agencies acting in accordance with the instructions of the EPPO, in some cases upon obtaining a permission of the national Court.

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Investigations of criminal offences that are to be subject to this Regulation should be led either by a Delegated Prosecutor personally on behalf of the European Public Prosecutor or via law enforcement agencies in the relevant EU member state. Upon conclusion of the investigation, the Delegated Prosecutor will submit a brief overview of the case to the European Public Prosecutor, including the defence motion and the list of evidence on the grounds of which the European Public Prosecutor's Office will adopt a decision to defer the case, request further investigation, or submit it to the relevant national Court; the selection of the relevant Court will be made by the European Public Prosecutor upon consulting the Delegated Prosecutor with respect to sound administration of justice.

The College of European Prosecutors should adopt decisions on strategic matters, including the stipulation of priorities of the EPPO and its investigation and prosecution policy as well as on general issues arising from individual cases, e.g. regarding the application of this Regulation, correct implementation of the EPPO investigation and prosecution policy, and issues of principle or issues that have a significant impact on the drafting of a consistent investigation and prosecution policy of the EPPO. Decisions adopted by the College of European Prosecutors on general issues should not affect the obligation to investigate and prosecute in accordance with this Regulation and with national law. The College of European Prosecutors should make its best efforts to adopt decisions on the grounds of a consensus. Whenever a consensus cannot be reached, decisions should be adopted by means of a vote.

The Permanent Chambers should monitor and direct investigations and ensure the coherence of the activities of the EPPO. The composition of the Permanent Chambers should be stipulated in accordance with the EPPO internal rules of procedure that should allow for, among other things, for the European Prosecutor to be a member of more than one Permanent Chamber whenever it is appropriate to

ensure an even workload among individual European Prosecutors to the highest extent possible. Permanent Chambers should be chaired by the European Chief Prosecutor, one of the Deputy European Chief Prosecutors, or the European Prosecutor pursuant to the guidelines stipulated in the EPPO internal rules of procedure. When allocating cases to individual Permanent Chambers, decisions should be based on the system of a random distribution to ensure, to the extent possible, an equal division of the workload. Deviations from this principle should be possible to ensure proper and efficient functioning of the EPPO on the grounds of a decision by the European Chief Prosecutor.

A European Prosecutor from each EU member state should be appointed to the College of European Prosecutors. In principle, European Prosecutors should monitor the investigation and prosecution carried out by the European Delegated Prosecutors in the EU Member State of their origin on behalf of the appropriate Permanent Chamber. They should act as liaisons between the central office and the decentralised level in their EU member states, facilitating the functioning of the EPPO as a single office. The supervising European Prosecutor should also check any instruction's compliance with national law and inform the Permanent Chamber if the instructions do not do so.

As a rule, the investigations of the EPPO should be carried out by the European Delegated Prosecutors in EU member states. They should do so in accordance with this Regulation and, with regards to matters not covered by this Regulation, in accordance with national law. The European Delegated Prosecutors should carry out their tasks under the supervision of the supervising European Prosecutor and under the direction and instruction of the competent Permanent Chamber. Whenever the national law of an EU member state provides for the internal review of certain acts within the structure of the national prosecutor's office, the review of such decisions taken by the European Delegated Prosecutor should fall under the supervision powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO. In such cases, EU member states should not be obliged to provide for review by national courts, without prejudice to Article 19 of the EU Treaty and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the "Charter").

The role (activity) of the Prosecutors in competent Courts should apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or

accused person has committed the offence, including, where applicable, sentencing and the resolution of any legal action or remedies available until that decision has become definitive.

The European Delegated Prosecutors should be an integral part of the EPPO and as such, when investigating and prosecuting offences within the competence of the EPPO, they should act exclusively on behalf and in the name of the EPPO on the territory of their respective EU Member State. This should entail, under this Regulation, granting them a functionally and legally independent status, which is different from any status under national law.

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Issues relating to the implementation of the Office of the European Public Prosecutor's Office

a) The Establishment of the European Prosecutor involves changes to existing European institutions on the future shape of which there is insufficient information

The Office of the European Public Prosecutor's Office is to be reappointed from The European Eurojust¹³ but that does not imply that that Eurojust will cease to exist upon the establishment of the EPPO; the European Prosecutor will rather build on the existing infrastructure of Eurojust and use it as its background with respect to the need of close cooperation between the two institutions. This solution respects the different starting points of both institutions that reflect upon their differing functions – in essence, Eurojust will remain a coordination and support unit facilitating judicial cooperation in criminal matters among EU Member states and the EPPO shall be deemed a judicial authority with investigative powers for the purpose of protecting the financial interests of the EU.

The institution of OLAF, i.e. the European Anti-fraud Office, poses another problem. Will this institution remain what it is, i.e. an institution for administrative investigations and initiation of prosecution, will it work independently or 'under the supervision' of the European Public Prosecutor, or will the European Public Prosecutor even control it?¹⁴

b) Risks of cooperation between the European Public Prosecutor and "national" Public Prosecutors

The EPPO will fully depend on the existing acquisition of information from domestic authorities, especially law enforcement, and the effectiveness of its activities will depend on the effectiveness of the activities of domestic bodies, especially law enforcement. The EPPO will be equipped with the necessary authority and prescriptive instruments so that it does not have to rely only on the voluntariness of the participating countries; nevertheless, the answer to the question of what the level of trust and cooperation will be between the European Public Prosecutor and domestic investigative authorities and criminal justice authorities remains open and as of right now unanswered, just as with many other questions.

Pursuant to Article 41 of the Preamble, the nature of the European Public Prosecutor's Office is quite specific – it shall remain firmly embedded in national legal structures while at the same time being an EU body. The EPPO will be acting in proceedings where most other actors will be national, such as courts, the police, and prison systems.

The role of the European Public Prosecutor acting in their home state while at the same time acting as an EU body will be schizophrenic. The European Public Prosecutor can easily be at the risk of a conflict of interests, a conflict with their 'national' or 'EU' independence. To address this issue briefly, we can mention the issue of career development of said European Public Prosecutor. Who will make the relevant decisions on their career development? One possible solution would be that the delegated European Prosecutor acts or has acted as a Delegated Prosecutor who is not included within the structure of the domestic Public Prosecutor's Office.

c) Problematic cooperation with EU member states that do not join the project; problematic cooperation with countries that are not EU member states

In relation to non-member countries, i.e. when requesting legal help, the European Public Prosecutor will have to rely on the traditional form of international judicial cooperation. If there is no agreement, the key element of judicial cooperation should be the principle of reciprocity pursuant to which individual countries shall provide the guarantee of mutuality to each other. Neither the European Union nor its authorities may be considered as a state; they shall be considered as *sui generis* entities; therefore, the EU may not provide a guarantee of mu-

tuality that is a requirement for the provision of legal aid. Non-member countries will thus not have an obligation to comply with the European Public Prosecutor's request for cooperation.

The situation can be resolved either by concluding international agreements between the EU and individual countries or by allowing the European Public Prosecutor to authorize authorities active in the criminal proceedings in the EU member state where the investigation is underway to comply with the request and the whole process would proceed according to international agreements that the relevant country concluded with the requested non-member country; however, in such cases, the assistance would be provided directly to the EU member state and not to the European Public Prosecutor (if the European Public Prosecutor were to decide to carry out the proceedings in another country, it would be a problem and it would be necessary to request legal aid via another state). As a result, the European Public Prosecutor's Office would act toward non-EU countries only via the authorities of EU member states and not as an individual entity.

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d) Different legal systems in Europe

This reason, which makes the creation of the project of a common European Prosecutor and the proper functioning thereof problematic, appears to be a very strong reason. There is no actual common European substantive criminal law in Europe. Yet the level of harmonization of penalties across the legal orders of individual EU member states appears to be key for the proposed form of cross-border cooperation.¹⁵

Currently, there are two systems of criminal law standing against each other – the continental system (the Romano-German system) and the Anglo-American system. There are significant differences between the two systems and they paradoxically represent a greater obstacle than the approximation of criminal law standards in such countries as Australia, Canada, and the United States of America. Within the coming years, we cannot expect that the Romano-German continental legal system and the British Anglo-American procedural system will become approximated as well as the criminal legislation in the EU to such an extent to provide foundation for a unified system of European criminal law.¹⁶

In addition, there are not only two different legal systems in Europe but also different definitions of fraudulent activities, definitions spread

across various parts of criminal legislation in individual countries from criminal law to criminal tax law.¹⁷ In other words, there is no unified definition of property crime or financial crime; nor are there unified standards of criminal liability; by the same token, there are no harmonized sanctions for criminal offences. In my opinion, the level of harmonization of the constitutive elements of a crime and penalties will be directly related to the extent of cooperation of domestic judicial authorities with the European Public Prosecutor's Office.

It is unfortunate that the Regulation does not stipulate the constitutive elements of fraudulent activities that damage financial interests – that could be a path toward harmonization of the constitutive elements. Moreover, it will be necessary to resolve the issue that some states may consider some identical actions as an administrative offence and other as criminal offences.

Another possible issue will arise in relation to criminal liability of legal persons. In the area of criminal liability of legal persons, certain states have a general criminal liability of legal persons while other states only have criminal liability of legal persons for selected criminal offences.

The question arises whether we should begin with the harmonization of the constitutive elements of the relevant criminal offences and the harmonization of the criminal liability of corporations instead – and leave the prosecution to the domestic authorities until the harmonization takes place or at least until a general harmonization of the standards of substantive and procedural law takes place.

The European Public Prosecutor Office will naturally have to respect the principles of a 'fair trial'; nevertheless, the harmonization of at least the basic procedural rights of the accused and the aggrieved persons or victims will be urgently needed in the future.

e) The jurisdiction will remain in the EU member states

One of the crucial problems of the proposed projects will be the fact that the criminal proceedings will be carried out in accordance with the regulations of individual states; yet their cooperation will be governed by European regulations. The investigation will be performed in accordance with the domestic regulations, yet the cooperation among the authorities active in the criminal proceedings will be subject to European regulations; that can cause certain complications and raise ques-

tions to which we still have no unanimous answer. To name one, let us mention the issue with the supervisory functions – it is unclear who should carry out the supervisory functions regarding the investigation. The Permanent Chambers of European Prosecutors should control the investigation. Delegated European Prosecutors should complete their tasks under the supervision of the supervising European Prosecutor and on the grounds of the proceedings and according to the instructions of the appropriate Permanent Chamber. It follows that a system of collective decision-making of the Permanent Chambers is being implemented, i.e. something that is unknown in our criminal code because so far, decisions in the Czech Republic in the pre-trial phase are made by the Public Prosecutor – an individual; furthermore, it follows that a complicated system of transfer of competences is being created. However, collective decision-making divides responsibility for the outcome of the prosecution.

Let us consider a simple example: the police authority in the domestic state discovers information that a criminal offence may have been committed that may be within the competence of the EEPO according to its circumstances. Should the police authority inform the Delegated European Prosecutor who will make the decision on the commencement of criminal prosecution by themselves or should the police authority inform the Permanent Chamber of European Prosecutors that will collectively make the decision on the commencement of criminal prosecution? And on the grounds of which information should the decision be made – will the file have to be hastily translated and dispatched or will the decision be made merely on the grounds of the report of the Delegated European Prosecutor? What if the situation calls for a deprivation of liberty or detention of the accused person; will they wait until a decision is made abroad on their criminal prosecution? Let us assume that the Permanent Chamber will issue a directive to commence the criminal proceedings that will, nevertheless, be carried out with an objectionable time lag.

And let us pose the following question: who will make decisions on potential legal remedies against the resolution on the commencement of the criminal prosecution? The Delegated European Prosecutor acting within the domestic judicial system or the Permanent Chamber of European Prosecutors? The Permanent Chamber should be excluded, since it had initiated the criminal prosecution. For defendants prosecuted in the “classic” criminal prosecution on criminal offences beyond

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the scope of powers of the EPPO before domestic authorities active in the criminal proceedings, the legislation will remain the same. Is there not a danger of an unequal procedural process?

There may be such a danger during a prosecution of the defendant also in the case of transferring evidence from one EU member state to another, which is explicitly permitted by the referred Regulation. Pursuant to Article 37, Item 1 of the Regulation, evidence presented by the prosecutors of the EPPO or by the defendant to a Court shall not be denied admission on the mere grounds that the evidence was gathered in another EU member state or in accordance with the law of another EU member state. Situations may arise when a breach of civil rights and freedoms, e.g. a search of the home or other premises, wiretapping and recording of telecommunication operations etc. has to be approved by a Court in one EU member state while in another EU member state the consent or request by the public prosecutor shall suffice. It does not have to be an academic example; until the amendment to the Czech Criminal Code amended by act no. 459/2011 Coll., a search warrant for other premises in the pre-trial phase could have been issued by a Public Prosecutor or a police authority (cf. the original version, Section 83a of the Criminal Code). Currently, the order and performance of the search of other premises shall utilize the provisions of Section 83, Article 1 and 2 of the Criminal Code analogously; i.e. the Judge shall decide during the pre-trial phase. Although such evidence would be ineffective in domestic criminal proceedings, it will be possible in proceedings carried out by a Delegated European Prosecutor pursuant to the referred Regulation.

EPPO investigations will be of a mixed nature because they will rely on a unified procedural standard, i.e. the referred Regulation; nevertheless, within the extent stipulated by the Regulation, the domestic law applies and later enters into the case in the shape of the decision of the Court, ordinary and extraordinary legal remedies against the decision of the Court, also the possibility to interfere with the case via the Constitutional Court of the Czech Republic, and finally via the European Court of Human Rights.

Conclusion

The idea of the establishment of a common European Public Prosecutor's Office is certainly valid. It is another example of institutional judicial cooperation that amends the existing institutions. The Euro-

pean Public Prosecutor's Office may be an important instrument in the fight against large cross-border crime aimed to damage the financial interests of the European Union.

It is too early to evaluate the project; it is scheduled to commence its operation in 2020. Currently, it remains at the level of a political compromise.

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There are many important and problematic issues relating to its establishment and its operations that have yet to be resolved. The Czech Republic should focus its efforts on impacting the wording of the future Code of Procedure of the EPPO to ensure that it clashes with Czech legislation as little as possible. Nevertheless, legislative changes in Czech procedural criminal law and in the Czech Act on the Prosecutor's Office are certain.



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Notes

- 1 The Czech Republic officially applied for membership in the EU in 1996; the accession negotiations commenced in March 1998; and the Czech Republic officially joined the EU as of 1 May 2004.
- 2 On this Issue, cf. for instance Jelínek, J., Gřivna, T., Herczeg, J., Navrátilová, J., Syková, A. et al.: *Trestní právo Evropské unie*, Prague: Leges, 2014, 368 pp.
- 3 Cf. Ivor, J., Jelínek, J. et al.: *Euro Crimes in the Legal Systems of the Czech Republic and of the Slovak Republic*, Budapest: Wolters Kluwer, 2015. The harmonisation includes particularly the so-called "Euro crimes", i.e. terrorism, cybercrimes, human trafficking, sexual exploitation of women and children, drug trafficking, trafficking in arms, money laundering, currency counterfeiting, corruption, and organized crime. Whenever necessary, regulations may harmonise the minimum rules on the definition of criminal offences as well as sanctions within the scope of the so-called cross-border crimes. The list is not conclusive for the future, it may potentially be broadened to include fraudulent criminal activity (Cf. Article 83 Item 1 of the Treaty on the Functioning of the European Union).
- 4 Europol, i.e. the European Union Agency for Law Enforcement Cooperation was established in 1995. It aims to support and promote the activities of the competent authorities of EU Member states and their mutual cooperation when preventing and combating organized crime, terrorism, and other forms of serious crime that concern two or more EU Member states.

- 5 Eurojust was established in 2002 as the European Union's Judicial Cooperation Unit; the judicial cooperation focuses on acquiring evidence for criminal proceedings. The scope of authority of Eurojust includes the forms of crime and criminal offences for which the relevant authority is always Europol.
- 6 OLAF is an abbreviation for the European Anti-fraud Office from the French (Office européen de lutte antifraude). It was established in 1999 on the grounds of the realization that the European structure lacks an institution that would dispose with investigatory powers. Its mission is to conduct administrative (not criminal) investigations with the objective to reinforce the fight against fraud, corruption, and any other illegal activity that has a negative impact on the financial interests of the European Union. OLAF exercises its powers independently of the European Commission; it should not take any instructions from any Government of any EU Member State or from any other authority or body. In addition to the administrative investigations, it provides coordinating aid to individual EU Member states in the designated area and prepares legislative initiatives to prevent fraud damaging the financial interests of the European Union and prevent the counterfeiting of the Euro.
- 7 The European Judicial Network was established in 1998. Its objective is to help improve the judicial cooperation between EU Member states, particularly in the area of fight against serious crime (organized crime, corruption, illegal drug trafficking, or terrorism) by means of providing support of informal direct contacts among judicial authorities and authorities responsible for judicial cooperation and prosecution of serious crimes within EU Member states.
- 8 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, and Slovakia.
- 9 Council Regulation (EU) [2017] 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.
- 10 The Council Regulation performs the function of an EU normative act. It is generally binding, directly applicable, and it typically has a direct effect (Article no. 288 of the Treaty on the Functioning of the European Union). Therefore, it may relate to any legal person within the EU. As a rule, it has the characteristics of an act that is effective throughout the whole EU. Exceptions are rare.
The form of a Council Regulation is typically used whenever it is necessary to adopt a uniform format for the whole EU. Whenever the same issue or the same legal relation is also governed by a national act, such an act shall not be used because it shall be replaced by the Regulation due to the priority of EU law. Essentially, the Regulation is a normative legal act. It may be binding for EU Member states or, as the case may be, only for some of them, for subjects of national law, and also for EU bodies – i.e. erga omnes.
Thus the Regulation is directly applicable, its transposition into the national law is not necessary. That is why Regulations are not published in national collections of legal rules and regulations. EU Member states must not transfer the content of the Regulation to their national legislation, they may only adopt legal rules and regulations necessary for their application.

- Cf. Tomášek, M. – Týč, V. et al.: *Právo Evropské unie*. 2nd Edition. Prague: Leges, 2017, p. 107-108.
- 11 <http://www.euinside.eu/en/news/the-eppo-has-finally-been-born>.
- 12 Úřad evropského veřejného žalobce, *Evropské hodnoty*, 20 May 2015, p. 1.
- 13 Eurojust – cf. footnote no. 7 herein.
- 14 OLAF – cf. footnote no. 8 herein.
- 15 Zarivnij, P.: *Správné načasování jako alfa omega zřízení a fungování Úřadu evropského veřejného žalobce*, *Státní zastupitelství* no. 1/2017, p. 32.
- 16 Přepechalová, K.: *Úřad evropského prokurátora*, *Trestněprávní revue*, 1/2016, p. 56.
- 17 Zarivnij, P.: *Op. cit.* p. 34.

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